

RESIDENTIAL LEASE (REFERRED TENANT)

Date. The date of this Lease is the _____ day of _____, 20__.

2. Owner. The Owner is Kirtland Family Housing, LLC.

3. Resident. The term "Resident" is used in the neuter singular, but if the Resident is more than one person, they are jointly and severally liable under this Lease. The dependent(s) of the member is/are listed here only for identification purposes. The Resident is:

- Service Member (Name) _____
- Dependents (Names): _____

4. Premises. The Premises consists of the unit identified as _____ in the City of Albuquerque, County of Bernalillo, State of New Mexico.

4.1 Whether a single or the half of a duplex or a townhouse, the Premises includes front and back yards and the driveway. Regardless of the type of unit, the Resident has the right to use the common facilities and common parking areas, if any, designated by the Owner that serve the housing area.

5. Term. The term of this Lease begins on the _____ day of _____, 20__, and will end on the _____ day of _____, 20__.

5.1 This Lease may be extended by mutual agreement of both the Owner and the Resident, initiated by written request from the Resident. The notice must be given not less than sixty (60) days prior to the end of the then current term of this Lease. If the Resident does not give notice to extend, then the Resident must move out at the end of the term. The same terms and conditions of the then current lease will continue into any extended lease term.

5.2 The Resident may terminate this Lease by giving a thirty (30)-day written notice to the Owner together with a copy of military orders of permanent change of station, retirement, or separation; or a letter from the proper base authority directing the Resident to live off base.

6. Rent. As consideration for this Lease, the Resident agrees to pay to the Owner rent of \$ _____ for the term, payable at the rate of \$ _____ each month in arrears, on or before the first business day of the next month (i.e., the rent due from the Resident for the month of January will be paid on February 1st, or, if that date is a non-business day, on the first business day immediately following February 1st). In the event that any rent due under this Lease is more than five (5) days late, the Resident must pay a late fee and the amount equal to five percent (5%) of the rent overdue.

6.1 The Resident agrees to arrange rent payments directly to the Owner by an allotment from military payroll. The Resident agrees to pay all rent to the Owner, or to the order of the Owner, in lawful money

of The United States of America at _____ or at such other place as the Owner may designate to the Resident from time to time.

6.2 The rent is calculated to be the current Basic Allowance for Housing ("BAH"), with dependents, or other sum that is allotted to the Resident as a service member by the United States Government to cover the cost of housing for a personal residence. The BAH or other sum is the amount established and published by the Government in the *Federal Register* or elsewhere.

6.3 The rent will be adjusted from time to time as the BAH is adjusted. However, the rent will not be adjusted more than once a year. The adjustment will take effect no earlier than February 1 of each calendar year during the term of this Lease. Any adjustment in rent for the Resident will not go into effect until the first day of the month following the month in which adjustments in the BAH are made by the United States Government.

6.4 If the first day of the term of this Lease is other than the first day of a calendar month, the Resident must pay the amount of \$_____ by cash or check to the Owner, which represents the prorated amount from and including the date of lease signing to and including the last day of that calendar month. That prorated amount will be due and payable to the Owner within thirty (30) days of lease signing. Any rent received by the Owner for the move-out month that exceeds the calculated prorate, will be refunded by the Owner within 30 days directly to the Resident.

6.5 After the Premises, in whatever housing area it is located, has been metered (see section 8 of this Lease), rent will be adjusted to allow the Resident a monthly utility allowance for natural gas and electricity only. The Owner will find the estimated average use of gas and electricity for units similar to the Premises, multiply that average amount by the rate of usage charged by the utility company for gas and for electricity, and add 10% to that resulting amount. The rent will be reduced by the monthly utility allowance, so that the Resident will change the monthly rent allotment. However, the Resident will then be responsible to pay the gas and the electricity bills directly to the utility provider when the provider sends bills to the Resident.

7. **Use.** The Resident will use the Premises for residential purposes only, except as permitted by published General Rules, Regulations and Resident Guidelines that are attached to and made a part of this Lease. The Resident will not use, or allow the Premises to be used, in any way that would create a nuisance or that would increase the existing rate of fire insurance. The Resident will not create, or allow to be created, any waste of the Premises.

8. **Utilities.** The Resident agrees to indemnify and save the Owner harmless from any liability for payment of utility charges for which the Resident is responsible and that remain unpaid and for which the Owner becomes liable. The Owner will comply with all obligations of an owner under the New Mexico Owner-Resident Relations Act.

8.1 Before the Premises has been metered, the rent under this Lease includes natural gas, electricity, water, sewer, refuse collection, ground maintenance for common areas, and operations and maintenance of the project of which the Premises is a part.

8.2 After the Premises has been metered, the rent includes all the items in section 8.1, except for gas and electricity, for which the Resident is responsible for timely payment.

9. Care of Premises. The Resident agrees to keep the Premises in good order and repair, at its sole expense, during the term of this Lease. The Resident agrees to comply with all present and future federal, state, and municipal, laws, rules, ordinances, and regulations affecting the Premises or any facility or system attached to, and necessary for the use of, the Premises. The Resident agrees to pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims, and demands, including reasonable attorneys' fees that may in any manner arise out of, or be imposed, because of its failure to comply with this paragraph.

10. Alterations and Improvements. The Resident agrees not to make any alterations, additions, or improvements whatsoever in or about the Premises without the prior written consent of the Owner. If the Owner does consent, alterations and improvements will immediately merge with and become a part of the real estate.

11. Assignment and Subletting. The Resident agrees not to assign this Lease or sublease the Premises, in whole or in part, or any interest of the Resident in this Lease.

12. Right of Entry. If the Resident or any guest or occupant is present at the Premises, representatives of the Owner may peacefully enter the Premises during published hours of operations, for the purposes listed below. If nobody is at the Premises, then that representative may enter peacefully during published hours of operations, by duplicate key or master if:

a. Written notice of the entry is left in a conspicuous place at the Premises immediately after the entry; and

b. Entry is made for:

- responding to your request;
- making repairs or replacements;
- performing pest control;
- doing preventative maintenance;
- checking for water leaks;
- delivering, installing, reconnecting or replacing appliances;
- removing health and safety hazards or items prohibited under the General Rules, Regulations and Guidelines;
- showing the Premises to government representatives for the limited purpose of determining housing and fire ordinance compliance.

12.1 If the Owner does not respond to a service request from the Resident within 7 days from the date of the request, the Owner will deliver to the Resident a notice of intent to repair not to exceed 8 days immediately following the end of the 7-day period.

13. Condemnation. If the Premises, or any part, are taken for any public or quasi-public use under any statute or by right of eminent domain, this Lease will automatically terminate, for the part taken, effective on the date of the notice from the taking entity that it requires possession. The rent payable

by the Resident for the rest of the term of this Lease will then be adjusted downward by this fraction:

$$\frac{\text{percentage of the Premises left after the taking}}{100}$$

All damages and payments resulting from the taking of the Premises will accrue and belong to the Owner, and the Resident will have no right to any part of them.

3.1 Special Provisions: (List provision and the Owner and the Resident will initial)

14. Indemnification. The Owner agrees that it will be liable for any loss or damage to property, or injury or death to persons, in or about the Premises caused by its act or neglect or the act or neglect of its employees, authorized agents, contractors, licensees, and invitees. The Resident agrees that it will be liable for any loss or damage to property, or injury or death to persons in or on the Premises caused by its act or neglect.

NOTICE: THE RESIDENT IS ENCOURAGED TO INQUIRE ABOUT PURCHASING RENTER'S INSURANCE COVERAGE TO PROTECT ITS INTERESTS UNDER THIS SECTION.

15. Surrender. At the expiration of the term of this Lease, the Resident agrees to turn over the Premises, peaceably and quietly to the Owner or its assigns, agents, or attorneys. The Premises must be turned over in as good order and condition as they now are, or as they may be put into, except for reasonable use and wear, and damage by the elements.

15.1 If the Resident remains in the Premises after the ending of this Lease, with or without the consent of the Owner, that fact will not cause an extension or renewal of this Lease, but it will result in a month-to-month lease term at the rent that was payable immediately prior to the Resident remaining in the Premises.

16. If any of the following actions happen or are taken by the Resident, any subsequent Resident, or the heirs, personal representatives, or assigns of the Resident:

- an assignment for the benefit of creditors,
- adjudged a bankrupt, either by voluntary or involuntary proceedings,
- a receiver or trustee appointed by any court of competent jurisdiction because of any insolvency, or
- any execution, attachment, repletion, or other court order issued against the Resident or any property of the Resident, so that the Premises or any building or buildings, or alterations, additions, or improvements will be taken or occupied, or attempted to be taken or occupied, by someone other than the Resident,

then the Resident will be in breach of this Lease.

16.1 If any of those events occurs, the Owner will have the option to terminate this Lease immediately and to re-enter and take possession of the Premises, and the Resident agrees to turn over the Premises to the Owner. In no event will this Lease be deemed an asset of the Resident if any of the four events listed in section 16 occurs.

17. Owner Remedies. The Resident agrees that should it default in the payment of rent, or any part of the rent, or in any of the covenants, agreements, or conditions in this Lease, the Owner will have the option, after all notices required by the New Mexico Owner-Resident Relations Act, to terminate this Lease and to re-enter and take possession of the Premises. In that case, the Owner may remove all persons from the Premises and may keep any property belonging to Resident and found on the Premises for any rent, damages, or other sums that are due under this Lease.

17.1 If rent is unpaid when due, and the Resident fails to pay rent within three days after written notice from the Owner and of the intention of the Owner to terminate this Lease, the Owner may terminate this Lease and the Resident will immediately turn over possession of the Premises to the Owner. However, if the Resident pays the full amount stated in the notice prior to the end of the three days, the payment will bar any action by the Owner for nonpayment of rent.

17.2 At any time after that termination, the Owner will use its best efforts to re-let the Premises in its name, or otherwise, for whatever term (which may be greater or less than the period that would otherwise have been the balance of the term of this Lease), and on whatever conditions, (which may include concessions or free rent) as the Owner may determine, and the Owner may collect and receive the rent.

17.3 The termination under section 17.1 will not relieve the Resident of its liability and obligations under this Lease, and those liabilities and obligations will continue after that termination.

17.4 The entire remaining balance of the rent that would have been due and payable for the rest of the term of this Lease if it was still in effect will become immediately due and payable by the terminated Resident as liquidated damages for its default. However, if the Owner re-lets the Premises before the end of the regular term of this Lease, the terminated Resident will be entitled to have the amount due and payable to the Owner from the new tenant subtracted from the total amount of rent due from the terminated Resident.

18. No Waiver. The Resident agrees that all remedies of the Owner under this Lease are cumulative and do not exclude any other remedy to which the Owner may be entitled. The failure by the Owner to require strict performance of the terms of this Lease, or receipt by the Owner of rent with knowledge of the breach of this Lease, will not be deemed a waiver of that breach. If the Owner fails to require strict performance of the terms of this Lease, that will not prevent the Owner from later terminating this Lease or from demanding strict performance of its terms, either for that breach, or for prior or subsequent breaches.

19. Invalidity. If any provision of this Lease, or any application of any provision, will be declared invalid or unenforceable by any court of competent jurisdiction, the remainder of this Lease, and any other applications of that provision, will continue in full force and effect.

20. **Binding Effect.** The agreements, covenants, terms, conditions, provisions, and undertakings in this Lease will extend to, and will bind, the heirs, personal representatives, successors, and assigns, of the Owner and the Resident, and will be construed as covenants running with the land. Wherever reference is made to the Owner or to the Resident in this Lease, it will include and apply also to the heirs, personal representatives, successors, and assigns of each of them.

21. **Governing Law.** The New Mexico Uniform Owner-Resident Relations Act regulates and determines rights, obligations, and remedies under this Lease. The Owner and the Resident subject themselves to the personal jurisdiction of the courts of the state of New Mexico for purposes related to this Lease, and they agree that the courts of the state of New Mexico will be the proper legal forum to hear and resolve claims arising from this Lease.

22. **Master Lease.** This Lease is entered into in connection with a 50-year ground lease by and between the Owner as lessee, and The United States of America as lessor, dated _____, 2003, to which is attached as an exhibit a certain Operating Agreement binding upon the Owner (collectively and including all exhibits to that lease, as it may be amended from time to time, the "Master Lease"). The Owner and the Resident acknowledge that the terms of this Lease are subject to the terms of the Master Lease, and in the event any term of this Lease violates any provision of the Master Lease, the terms of the Master Lease will control.

23. Notwithstanding any provision of this Lease, to the extent, if at all, that Section 56-7-1 of New Mexico Statutes Annotated (1978) is deemed to apply to any agreement to indemnify in this Lease (sections 8 and 14) that agreement will not extend to liability, claims, damages, losses, or expenses including attorneys' fees, arising out of:

The preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications by the indemnified party, or the agents or employees of the indemnified party; or

The giving of, or the failure to give, directions or instructions by the indemnified party, or the agents or employees of the indemnified party, where the giving of, or failure to give, such directions or instructions is the primary cause of bodily injury to persons or damage to property.

IN WITNESS WHEREOF, the Owner and the Resident have set their hands the day and year in section 1.

Managing Agent and Owner

Resident

EPT Management Company as Managing Agent for
Kirtland Family Housing, LLC

By: _____

By:

